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## Lions, Tigers, and Bears [Oh My]: How to Stop Endangered Species Crime

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## NOTES

### LIONS, TIGERS AND BEARS [OH MY]: HOW TO STOP ENDANGERED SPECIES CRIME

*Ruth A. Braun\**

#### INTRODUCTION

Rhinoceros, tigers, crocodiles, owls, panda bears . . . these are among the list of protected endangered species.<sup>1</sup> The list encompasses more than 30,000 species of animals and plants.<sup>2</sup> The Convention on International

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1. See Convention on International Trade in Endangered Species of Wild Fauna and Flora, March 3, 1973, 27 U.S.T. 1087, 993 U.N.T.S. 243 [hereinafter CITES]. For the complete "list" of endangered species as formed by CITES, see, Appendices I-III of CITES. Appendix I contains 821 species, Appendix II contains 28,993 species, and Appendix III contains 229 species. For a summary of Appendices I and II, see Appendix A of this Note. The Appendices refer to each species by its scientific name.

2. See *id.* For a complete updated list, see CITES, (visited April 28, 2000) <<http://www.wcmc.org.uk/CITES/eng/index.shtml>>.

Trade in Endangered Species of Wild Flora and Fauna ("CITES") is an international treaty entered into force in 1975 by ten countries to prevent the extinction of endangered species.<sup>3</sup> Today, there are 151 countries that have joined CITES.<sup>4</sup> Many of these member countries have drafted national legislation to conform to the guidelines set forth in the international treaty.<sup>5</sup> However, in spite of the adoption of CITES, endangered species are no less endangered.<sup>6</sup>

The goal of CITES is to protect endangered species worldwide.<sup>7</sup> CITES recommends that member countries impose sanctions against countries that do not adhere to the treaty by prohibiting trade of endangered species.<sup>8</sup> However, some member countries are less aggressive than others in prosecuting violators.<sup>9</sup> Although CITES is an international solution, the problem of extinction of endangered species is of a global magnitude. This Note examines the limits of CITES and argues for stronger

3. See CITES, *supra* note 1, at preamble. The members of CITES "recogniz[e] . . . that international cooperation is essential for the protection of certain species of wild fauna and flora against over-exploitation through international trade." *Id.* See also DAVID S. FAVRE, INTERNATIONAL TRADE IN ENDANGERED SPECIES xvii (1989).

4. See TRAFFIC, (visited April 15, 2000) <[http://www.traffic.org/factfile/factfile\\_cites.html](http://www.traffic.org/factfile/factfile_cites.html)>. The most recent member is Croatia, which ratified on March 14, 2000.

5. See, e.g., Endangered Species Act, 16 U.S.C. §§ 1531–1544 (1973) [hereinafter ESA]. The United States enacted the ESA in 1973 to conserve endangered species. See 16 U.S.C. § 1531(b).

6. See discussion *infra* Part I.A.

7. See *supra* note 3.

8. See CITES, *supra* note 1, at art. VIII(1).

9. See, e.g., ESA, 16 U.S.C. § 1540. The ESA provides for civil and criminal sanctions for illegal endangered species trade. See EC No. 338/97 and EC No. 939/37, 1997 OJ L 140, 1997 OJ L 157 (Article 44). The European Union's statute does not specifically provide sanctions for illegal endangered species trade.

sanctions to prevent the abuse of endangered species. Part I explains how endangered species have become extinct and provides a history of the development CITES. Part II illustrates the problem of illegal trafficking of endangered species, which has become one of the fastest growing areas of crimes in the world.<sup>10</sup> Part II also evaluates the national legislation of several CITES member countries, focusing on the failure of these national policies to solve the international problem. Finally, Part III argues for more funding and more severe and consistent sanctions worldwide to prevent further trafficking of endangered species.

#### I. THE IMPORTANCE OF PROTECTING ENDANGERED SPECIES AND THE FORMATION OF CITES

Endangered species are an integral part of our environment and their benefits would be irretrievably lost by extinction.<sup>11</sup> Many factors in the twentieth century have led to the endangerment and extinction of species worldwide.<sup>12</sup> In order to develop the best methods to protect endangered species, it is first necessary to explore the reasons that endangered species have become extinct. This Section discusses the importance of protecting endangered species and describes the history of CITES.

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10. See Maureen Paton, *Country: Tougher Than Ever on the Wildlife Beat*, DAILY TELEGRAPH (LONDON), July 3, 1999, available in 1999 WL 21604053.

11. See generally John B. Heppes and Eric J. McFadden, *The Convention on International Trade in Endangered Species of Wild Fauna and Flora: Improving the Prospects for Preserving Our Biological Heritage*, 5 B.U. INT'L L.J. 229, 230 (1987) (describing the benefits of preserving endangered species).

12. See discussion *infra* Part I.A.

### A. *Why Endangered Species Have Become Extinct*

The leading cause of the decline of endangered species is loss of critical habitat.<sup>13</sup> In 1978, the United States Supreme Court noted that loss of critical habitat is among the greatest threats to endangered species.<sup>14</sup> The critical habitats of species, as defined by the Endangered Species Act ("ESA"),<sup>15</sup> are specific areas within the geographical domain of the species that include the physical or biological features essential to the conservation of the species.<sup>16</sup> Changes in habitat may lead to the depletion of species unable to live in their new surroundings.<sup>17</sup> As a result of environmental changes, "half of the recorded extinction of mammals over the past 2000 years occurred in the most recent 50 years."<sup>18</sup>

Another significant factor causing endangerment of species is poaching.<sup>19</sup> Poaching is the unlawful hunting

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13. See generally Oliver A. Houck, *Why Do We Protect Endangered Species, and What Does That Say About Whether Restrictions on Private Property to Protect Them Constitute "Takings"?*, 80 IOWA L. REV. 297, 318 (1995) (stating that in the twentieth century the major cause of species endangerment is loss of habitat).

14. See, e.g., *Tennessee Valley Authority v. Hill*, 437 U.S. 153, 179 (1978). In this case, the Supreme Court, in effect, protected several endangered species when it prevented the Tennessee Valley Authority from erecting the Tellico Dam. See *id.*

15. See *supra* note 5.

16. See 16 U.S.C. § 1532(5)(A).

17. See, e.g., Houck, *supra* note 13, at 318 (claiming "species on their way to extinction are those whose ecosystems have been eliminated").

18. *TVA v. Hill*, 437 U.S. at 176 (citing 1973 House Hearings 202, statement of Assistant Secretary of the Interior).

19. See, e.g., Julie Cheung, *Implementation and Enforcement of CITES: An Assessment of Tiger and Rhinoceros Conservation Policy in Asia*, 5 PAC. RIM L. & POL'Y J. 125 (stating that the "world's tiger and rhinoceros populations

of wildlife and poses a threat to many protected animals.<sup>20</sup> For example, poaching of tigers over the past century has led to a 95% reduction of the species.<sup>21</sup> Researchers estimate that at this rate, tigers will become extinct within the next 20 years.<sup>22</sup> The rhinoceros population faces a similar fate, due to the illegal trade of rhinoceros horn.<sup>23</sup> It is estimated that poaching of both the tiger and rhinoceros populations have decreased each species by 90% in the past two decades.<sup>24</sup>

Illegal trade of wildlife is another leading cause of endangered species extinction.<sup>25</sup> In fact, the illegal trade of endangered species is the third largest illegal trade worldwide, after illegal trade of drugs and weapons.<sup>26</sup> The high profits procured from the illegal trade of endangered species provide incentive for commission of illegal wildlife crime,<sup>27</sup> which generates more than \$5 billion in profits annually.<sup>28</sup>

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have been nearly eradicated due to poaching throughout Asia and parts of southern Africa").

20. See BLACK'S LAW DICTIONARY 1155 (6th ed. 1990). Poaching is defined as "the unlawful entry upon land for taking or destroying fish or game." *Id.*

21. See, e.g., *Tiger Products Sold Widely in Japan*, JAPAN WKLY. MONITOR, Feb. 22, 1989 (providing the estimate of 100,000 tigers existing at the beginning of the last century along with the current estimate of only 5000 tigers).

22. See Cheung, *supra* note 19, at 126.

23. See *id.* at 134.

24. See *id.* at 126.

25. See Heppes & McFadden, *supra* note 11, at 230.

26. See Robert J. Shaw, *Nabbing the Gourmet Club: Utilizing RICO Enforcement and Punitive Provisions to Curb the International Trade of Endangered Species*, 42 N.Y.L. SCH. L. REV. 283, 284 (1998).

27. See, e.g., Cheung, *supra* note 19, at 134 (claiming that the value of rhinoceros horn is worth more than its weight in gold, selling with a mark-up similar to that of cocaine).

28. See Robert S. Anderson, *The Lacey Act: America's Premier Weapon*, 16 PUB. LAND L. REV. 27, 31 (1995).

### B. *The Importance of Protecting Endangered Species*

Endangered species should be protected because they are irreplaceable.<sup>29</sup> Although all of the potential benefits of every species may not be fully realized, endangered species provide valuable resources for our future. "Humans benefit economically and biologically, both directly and indirectly, from a diversity of species. The more biological diversity on Earth, the larger the potential for human benefit."<sup>30</sup> The loss of endangered species may not be realized until long after their extinction, at this point, the damage will be irreversible.<sup>31</sup>

Another reason to protect endangered species is that endangered species may hold the key to new discoveries for medicine.<sup>32</sup> The continued existence of certain endangered species may enable scientists to discover new cures for illnesses.<sup>33</sup> For example, a new, highly effective painkiller was developed from the poison skin of a frog.<sup>34</sup> The scientists discovered that the toxic sweat of the *Epibpedobates Tricolor* frog was more powerful than morphine and did not have the same serious side ef-

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29. See CITES, *supra* note 1, at preamble.

30. Jaqueline Lesley Brown, *Preserving Species: The Endangered Species Act Versus Ecosystem Management Regime, Ecological and Political Considerations, and Recommendations for Reform*, 12 J. ENVTL. L. & LITIG. 151, 154 (1997).

31. See *id.* at 154.

32. See generally Julie Bloch, *Preserving a Biological Diversity in the United States: The Case for Moving to an Ecosystem Approach to Protect the Nation's Biological Wealth*, 10 PACE ENVTL. L. REV. 175, 185-186 (1992) (claiming that medical research will yield an increasing number of possible cures and means of preventing human diseases).

33. For a discussion of the pharmacological benefits of flora and fauna, such as antibiotics, analgesics and anticoagulants see Heppes & McFadden, *supra* note 11, at 231.

34. See Evelyn Strauss, *New Nonopiod Painkiller Shows Promise in Animal Tests*, SCIENCE, Jan. 2, 1998, at 32 (reporting the discovery of ABT-594, a drug developed by Abbott Laboratories after tests were performed on the animal).

fects.<sup>35</sup> If this species had become extinct prior to the scientific finding, the painkiller would never have been discovered. Due to the loss of endangered species, countless medicines and vaccines may never be discovered.<sup>36</sup>

In addition to health benefits species, the environment also benefits from protection of endangered species.<sup>37</sup> Although it is natural for species to come in and out of existence, the current rate of species extinction has increased to an unnatural level.<sup>38</sup> There are several possible benefits to the environment that may result from the protection of endangered species. First, since some species are dependent on others for survival; protection of endangered species may prevent disruption in the natural food chain.<sup>39</sup> Second, protection of endangered species preserves our normal supply of oxygen and food.<sup>40</sup> Finally, if we do not protect endangered species, we may "trigger a downward spiral of extinction that could eventually swallow us."<sup>41</sup>

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35. See *id.*

36. See Bloch, *supra* note 32, at 186 (citing the testimony of a spokesperson for the American Pharmaceuticals Association before the House of Representatives: "It is alarming to consider that years ago, there might have existed a plant or microorganism that could have cured AIDS or other diseases, but that through inaction, that species became extinct").

37. See *id.* at 185 (stating that people could not survive without the plants and animals that provide them with food and oxygen).

38. See Brown, *supra* note 30, at 153.

39. See Bloch, *supra* note 32, at 182 (stating that "scientists have estimated that for every known species that becomes extinct, tens of others may also disappear because of the complex web of relationships between species").

40. See *id.* at 185. The most basic "benefit" of the earth's biological resources is life. People cannot survive without the food and water supplied by the earth's plants and animals.

41. Brown, *supra* note 30, at 154.

One solution to protect endangered species may be to relocate them.<sup>42</sup> Another possible solution is to breed them.<sup>43</sup> The argument against removing wildlife from their natural surroundings is that this would be a "failure to see the necessary relationship between the species and its ecosystem."<sup>44</sup> For example, in *Tennessee Valley Authority v. Hill*,<sup>45</sup> the United States Supreme Court interpreted the ESA as protecting the snail darter against removal from its critical habitat.<sup>46</sup> Similarly, it would be unfair for humans to remove wildlife from its natural habitat for the purposes of breeding simply because humans are unable to protect species from harm – the harm that humans caused.<sup>47</sup> Since people have caused the problem of endangered species, humans should stop it. CITES was created to take appropriate measures for the protection of endangered species.<sup>48</sup>

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42. See Houck, *supra* note 13, at 298 (discussing, *inter alia*, the potential migratory routes of some species).

43. See *id.* at 298-299.

44. *Id.* at 300.

45. 437 U.S. 153 (1978).

46. See 437 U.S. at 159-160.

47. See, e.g., 16 U.S.C. § 1531(a)(1). "Various species of fish, wildlife and plants in the United States have been rendered extinct as a consequence of economic growth and development untempered by adequate concern and conservation." The ESA has been described as a "surrogate law for ecosystems." See Houck, *supra* note 13, at 301.

48. See CITES, *supra* note 1, preamble.

Recognizing that wild fauna and flora in their many beautiful and varied forms are an irreplaceable part of the natural systems of the earth which must be protected for this and the generations to come;

Conscious of the ever-growing value of wild fauna and flora from aesthetic, scientific, cultural, recreational and economic points of view;

Recognizing that peoples and States are and should be the best protectors of their own wild fauna and flora;  
Recognizing, in addition, that international co-operation is essential for the protection of certain species of wild fauna and flora against over-exploitation through international trade;

### C. *The Formation of CITES*

The Convention on International Trade in Endangered Species of Wild Flora and Fauna ("CITES") was formed in recognition that international cooperation is essential for the protection of certain species.<sup>49</sup> The treaty was drafted on March 3, 1973.<sup>50</sup> By the time the treaty was enacted in 1975, there were twenty-one member countries,<sup>51</sup> in the last 25 years, the number of member nations has increased to 151.<sup>52</sup> Ironically, as the membership of CITES has increased, so has the extinction of endangered species.<sup>53</sup>

CITES limits the trade of endangered species by prohibiting endangered species trade without prior approval in the form of permits.<sup>54</sup> Permits are necessary to import and export endangered species between member countries.<sup>55</sup> In accordance with CITES, member coun-

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Convinced of the urgency of taking appropriate measures to this end;

Have agreed [to the provisions of CITES].

*Id.*

49. *See id.* at preamble.

50. *See* CITES, *supra* note 1, at proclamation.

51. *See* Terrence L. Lavy, *Extradition in the Protection of Endangered Species*, 4 CRIM. L.F. 443, 449 (1993).

52. *See* CITES *List of Parties* (last modified Mar. 22, 2000) <<http://www.wcmc.org.uk/CITES/eng/index.shtml>>. *See also* Appendix B.

53. *See* Amy E. Vulpio, *From the Forests of Asia to the Pharmacies of New York City: Searching for a Safe Haven for Rhinos and Tigers*, 11 GEO. INT'L ENVTL. L. REV 463, 469 (1999) (generally evaluating the implementation of CITES at the national level).

54. *See* CITES, *supra* note 1, at art.III.(2), art.III.(3), art.IV.(2), art.V.(2). These sections list the import and export permit requirements. *Id.*

55. *See id.* For species listed under Appendix I to CITES, import and export permits are required. For species listed under Appendices II and III, only export permits are required.

tries are required to issue permits to exporters.<sup>56</sup> The purpose of the permit is to identify the species being transported and to ensure that authorities of a member country are satisfied that the exportation will not be detrimental to the species.<sup>57</sup> Law enforcement officials can use the permits to help identify illegal traders. For example, in *United States v. 3210 Crusted Sides of Caiman Crocodilius Yacare*,<sup>58</sup> a United States wildlife inspector discovered that an endangered species of crocodile was transported through the United States with a permit that falsely identified it as being unprotected.<sup>59</sup> The inspector became suspicious because the country of origin listed on the permit was not the species' native country.<sup>60</sup> The permit requirements for each species vary, depending on what level of protection the species should receive, which is specified in the treaty.<sup>61</sup>

For purposes of assigning protection, CITES divides endangered species into three categories.<sup>62</sup> Species listed in the first category, Appendix I to the treaty, receive the highest protection, while species listed in the third category, Appendix III, which are the least endangered, receive the lowest protection.<sup>63</sup> The first category

56. See *id.* at art. III(2), art. IV(2), art. V(2). "The export of any specimen included in [each Appendix respectively] shall require the prior grant and presentation of a permit." *Id.*

57. See *id.* at art. III(2)(a). A permit will only be granted when "a Scientific Authority of the State of export has advised that such export will not be detrimental to the survival of that species." *Id.*

58. 636 F. Supp. 1281 (S.D. Fla. 1986).

59. 636 F. Supp. at 1283.

60. 636 F. Supp. at 1283.

61. See CITES, *supra* note 1, at art. III(1), art. IV(1), art. V(1). All trade in species included in Appendices I., II., and III. conform with these provisions respectively.

62. See *id.* at art. II(1)-(3).

63. See *id.* at art. III(2), art. V (2) (describing the permit requirements for species listed in Appendices I. and III.).

of endangered species includes the species most threatened by extinction.<sup>64</sup> International trade of these species is strictly regulated to avoid extinction.<sup>65</sup> CITES requires both import and export permits but if the transport of the particular species will be detrimental to its survival, neither permit will be granted.<sup>66</sup>

The second category of protected species, Appendix II to the treaty, are the species that are likely to become endangered unless trade is restricted.<sup>67</sup> Unlike the first category of protected species, these species can be legally traded when the trader receives an export permit.<sup>68</sup> Although an import permit is not required under CITES, the export permit must be presented prior to the import

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64. See *id.* at art. II(1). "Appendix I shall include all species threatened with extinction which are or may be affected by trade. Trade in specimens of these species must be subject to *particularly strict regulation* in order not to endanger further their survival and must only be authorized in exceptional circumstances." *Id.* (emphasis added).

65. See *id.*

66. See *id.* at art. III(2)(a). An export permit will only be granted if "the Scientific Authority of the State of export has advised that such export will not be detrimental to the survival of that species." *Id.*

67. See *id.* at art. II(2).

[A]ppendix II shall include: (a) all species which although are not necessarily now threatened with extinction may become so unless trade in specimens of such species is subject to strict regulation in order to avoid utilization incompatible with their survival; and (b) other species which must be subject to strict regulation in order that trade in specimens in certain species referred to in subparagraph (a) of this paragraph may be brought under effective control.

*Id.*

68. See *id.* at art. IV. According to CITES, an export permit may be obtained when the following conditions have been met: a scientific authority states that export is not detrimental to the survival of the species and if the management authority of the country is satisfied that the species was obtained lawfully and will be shipped in a manner that will minimize risk. See *id.*

of the species.<sup>69</sup> Under CITES, trade of endangered species in Appendix II requires an export permit.<sup>70</sup>

The third category of endangered species regulated by CITES are species whose trade needs to be regulated to avoid exploitation.<sup>71</sup> A species may be identified for protection by a member country for control of trade of that species by another member country.<sup>72</sup> The initiative taken by individual countries is an effective way to use the guidance provided by CITES to self-regulate trade and prevent member countries from exploiting endangered species. Trade of category three species requires export permits as well as certificates of origin at the country of import.<sup>73</sup>

CITES members convene at least once every two years.<sup>74</sup> The endangered species listed in the three Appendices to CITES are periodically reviewed by member countries.<sup>75</sup> Members also discuss potential amendments and review the effectiveness of the treaty.<sup>76</sup>

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69. *See id.* at art. IV(4). The import of an Appendix II species requires prior presentation of either an export permit or re-export certificate. *See id.*

70. *See id.* at art. IV(2). "The export of any specimens of a species included in Appendix II shall require the prior grant and presentation of an export permit." *Id.*

71. *See id.* at art. II(3). "Appendix III shall include all species which any Party identifies as being subject to regulation within its jurisdiction for the purpose of preventing or restricting exploitation, and as needing the cooperation of other parties in the control of trade." *Id.*

72. *See id.*

73. *See id.* at art. V.

74. *See id.* at art. XI(2). The most recent meeting was held in April 2000 in Nairobi, Kenya. For reference to this meeting see Katy Payne, *Caring Beasts . . .*, THE WASH. POST, April 8, 2000, at A17.

75. *See CITES, supra* note 1, at art. XI(3)(b).

76. *See id.* at art. XI(3).

In spite of the elaborate protection required by CITES, the treaty's effectiveness is limited.<sup>77</sup> This is mostly attributable to the fact that CITES does not have any provisions for international enforcement.<sup>78</sup> Instead, CITES relies on each member country to implement the treaty's provisions by adopting national legislation.<sup>79</sup> CITES recommends that member countries penalize other countries that do not adhere to the treaty.<sup>80</sup> For example, in 1994, the United States warned Taiwan that it would impose trade sanctions if Taiwan continued its illegal trade of endangered species.<sup>81</sup> To date, the sanctions imposed by the United States against Taiwan are the only formal sanctions ever imposed under CITES.<sup>82</sup>

The only punishment specified by CITES is the return of the illegally exported species to its country of origin.<sup>83</sup> However, this penalty lacks a method of enforcement because it is the national legislation of each country, not CITES, which governs further penalties to offenders

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77. See Cheung, *supra* note 19, at 129 (comparing CITES to other treaties that do not specify enforcement mechanisms).

78. See *id.*; see also, Vulpio, *supra* note 53, at 467 (claiming that lack of central enforcement cripples the effectiveness of CITES).

79. See CITES, *supra* note 1, at art. VIII(1) (describing the appropriate measures to be taken by each member of the treaty).

80. See *id.* at art. VIII(1)(a). The parties shall take appropriate measures to enforce the present treaty including "penaliz[ing] trade in, or possession of, such specimen, or both." *Id.*

81. See, e.g., Rita Beamish, *Clinton Weighs Sanctions Over Taiwan Wildlife Trade*, THE CHI. SUN-TIMES, Apr. 7, 1994, available in 1994 WL 5531739.

82. See Vulpio *supra* note 53, at 479.

83. See CITES, *supra* note 1, at art. VIII(4)(b). Where a living specimen is confiscated, "the Management Authority shall, after consultation with the State of export, return the specimen to that State at the expense of that State." *Id.*

by the use of criminal and monetary sanctions.<sup>84</sup> For example, in the United States, the ESA provides civil and criminal penalties for ESA violations.<sup>85</sup>

Another limitation of CITES is that it only *regulates* the trade of endangered species but it does not *prohibit* their trade.<sup>86</sup> CITES has been criticized for its lack of specific sanctions against countries that do not comply with the provisions of the treaty.<sup>87</sup> The problem with allowing each country to develop its own national legislation is that it leads to an inconsistent application of CITES.<sup>88</sup>

The inadequacy of CITES is evidenced by the rise of illegal trade of endangered species, which has become the fastest growing area of crime in the world.<sup>89</sup> The trade of endangered species is the third largest illegal trade in dollars, second in volume.<sup>90</sup> Individuals and companies worldwide trade 350 million animals and plants annually.<sup>91</sup> It is estimated that 25% of this trade is illegal.<sup>92</sup> This is because illegal trade is extremely profitable. In fact, the international illegal trade of en-

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84. See CITES, *supra* note 1, at art. VIII(1).

85. See 16 U.S.C. § 1540 (a)-(b).

86. See Lavy, *supra* note 51, at 445 (stating that although CITES is a regulatory treaty protecting endangered species, the treaty does not prohibit the species' international trade).

87. See *id.* at 449 (claiming that "lack of treaty sanction undercuts the deterrent effect of CITES").

88. See, e.g., Cheung, *supra* note 19, at 139 (discussing the variation in penalties imposed by China, Hong Kong, Taiwan and South Korea).

89. See Paton, *supra* note 10 (claiming that the Internet is one of the methods of trade that makes endangered species trafficking the fastest growing area of crime).

90. See *supra* note 26 and accompanying text.

91. See M2 Presswire, *UN: Commission on sustainable development continues high-level segment, with debate focused on oceans*, April 23, 1999, available in 1999 WL 15761383.

92. See *id.*

dangered species is estimated to be an annual business over \$5 billion.<sup>93</sup> The financial gain involved in the trade of endangered species far outweighs the penalties of endangered species crime. So, while CITES recommends that member countries penalize illegal traders,<sup>94</sup> the punishment does not prevent the crime. The following section illustrates the proliferation of endangered species crime in spite of the presence of CITES.

## II. ENDANGERED SPECIES TRAFFICKING

Endangered species crimes are committed worldwide.<sup>95</sup> A variety of individuals and organizations trade illegally in endangered species for many different reasons.<sup>96</sup> This Section examines the crimes associated with endangered species committed by various countries and evaluates the ineffectiveness of CITES to prevent these crimes.

### A. *Recent Endangered Species Crimes*

#### 1. Crimes Committed in Various Countries

Thousands of animals are needlessly killed each year. For example, in Africa, hundreds of elephants are killed every day for their ivory tusks.<sup>97</sup> It is estimated that between 1979 and 1989, the African elephant popula-

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93. See *supra* note 28 and accompanying text.

94. See CITES, *supra* note 1 at art. VIII(1)(a).

95. See Anderson, *supra* note 28, at 31. Trafficking in illegal wildlife crime occurs both internationally and domestically. See *id.*

96. See *id.* at 31-32 (describing some of the various forms of illegal international wildlife trade).

97. See Editorial, *Elephants and Ivory*, THE WASH. POST, May 13, 1989, at A18.

tion was reduced by half.<sup>98</sup> In 1989, CITES implemented a worldwide ban on the trade of ivory in an effort to save the elephants.<sup>99</sup> During the ensuing ten years, poaching rates of elephants decreased and the elephant populations began to recover.<sup>100</sup> In 1999, the members of CITES agreed to limited trade of raw ivory,<sup>101</sup> resulting in the rise of elephant poaching again.<sup>102</sup> Some African countries argue that the ban on ivory trade should be lifted to give locals an economic stake in preservation and thus an incentive to conserve elephants.<sup>103</sup>

Endangered species crime is committed in impoverished countries as a means of income. For example, in

98. See, e.g., Bill Padgett, *The African Elephant, Africa, and CITES: The Next Step*, 2 IND. J. GLOBAL LEGAL STUD. 529, 537 (1995).

99. See *id.* at 529-530.

100. See Payne, *supra* note 74, at A17.

101. See generally Shawn M. Dansky, *The CITES "Objective" Listing Criteria: Are They "Objective" Enough to Protect the African Elephant?*, 73 TUL. L. REV. 961, 972-973 (1999). Effective March 18, 1999, the members of CITES agreed to allow trade of ivory between Japan and Zimbabwe, Namibia and Botswana, but only when the following conditions are satisfied:

[t]he ivory control deficiencies identified in the Panel of Experts evaluation are remedied; 2) the CITES Secretariat verifies that all conditions have been fulfilled; 3) the CITES Standing Committee agrees that all conditions are met; 4) the three proponent countries withdraw their reservations to the elephant listing before the new listing takes effect (September 18, 1997); 5) there is a renewed commitment to regional law enforcement cooperation through such mechanisms as the Lusaka agreement; 6) mechanisms are established or strengthened to reinvest ivory trade revenue into elephant conservation; 7) a mechanism is developed by the Standing Committee for automatic re-transfer of downlisted populations to Appendix I (i.e. halting trade) if conditions are violated or if there is an escalation of illegal hunting or trade; 8) there is compliance with all other precautionary measures in the original proposals; 9) agreement is reached on an international reporting and monitoring system for poaching and illegal trade.

*Id.*

102. See Dansky, *supra* note 101, at 974.

103. See Padgett, *supra* note 98, at 530.

Latin America, illegal animal smuggling is one of the largest illegal exports, second only to drugs.<sup>104</sup> Indigents in the local communities hunt and capture highly sought after animals and sell them to smugglers for a relatively nominal price.<sup>105</sup> The sale of endangered species to smugglers has become a livelihood for impoverished citizens.<sup>106</sup> Large drug cartels take advantage of impoverished locals by purchasing endangered species from them and then smuggling drugs and animals at a large profit.<sup>107</sup>

In contrast to the poverty that contributes to endangered species crime in developing countries, citizens in the United States may commit endangered species crimes because of their wealth. For example, the United States has the largest market for endangered reptiles.<sup>108</sup> In September 1998, the United States Fish and Wildlife Service completed a three-year investigation of a large Asian reptile ring.<sup>109</sup> A businessman from Malaysia was arrested along with two Americans for smuggling more

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104. See S. Lynne Walker, *Animal Smuggling*, SAN DIEGO UNION & TRIB., Jan. 21, 1996, at A1 (reporting an estimate made by environmental and law enforcement officials).

105. See *id.* at A18 (providing an example of a Mayan Indian, whose trade was to raise hundreds of baby parrots and sell them for \$3 each). See also, *Mexico Gets Tough*, L.A. TIMES, Nov. 13, 1997, at A1 (providing examples of poachers engaged in the trade of illegal turtle eggs).

106. See Walker, *supra* note 104, at A18.

107. See Vulpio, *supra* note 53, at 473 (claiming that poachers receive a small amount of money compared to "wildlife kingpins" who may earn a 6000% profit over the prices they pay poachers).

108. See Grunwald, *U.S. Bags Alleged Trafficker in Reptiles; Import Sting Nets Malaysian's Arrest*, THE WASH. POST, Sept. 16, 1998, at A3.

109. See *id.*

than 39 species, totaling over 300 animals, worth \$500,000 into the United States.<sup>110</sup>

Although the United States has taken an aggressive approach to punishing illegal endangered species traders, not every CITES member country has taken a similar approach.<sup>111</sup> For example, in Mexico, animal traffickers have only been minimally punished for illegal endangered species trade.<sup>112</sup> Without the threat of arrest, traffickers may have more freedom to capture and kill endangered species.<sup>113</sup> Since many countries do not have the economic reserves to prevent import and export of endangered species, smuggling has become increasingly easy.<sup>114</sup> One of the results of the lack of punishment is that organized crime has now formed an intricate web of animal traffickers.<sup>115</sup>

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110. See *id.* at A3. A 55-count indictment was unsealed against Keng Liang Wong. See *id.* The wildlife included Komodo Dragons, large lizards that sell for approximately \$30,000 each. See *id.*

111. See discussion *infra* Part II.B.

112. See Walker, *supra* note 104, at A18 (claims that in Mexico, animal traffickers have been able to operate without fear of apprehension because Mexico has no laws punishing the illegal actions).

113. See *id.* at A18 (claiming that animal traffickers will continue to trade as long as the profits remain high without any risk).

114. See, e.g., Heppes and McFadden, *supra* note 11, at 238 (providing that in Argentina, for example, national customs inspectors lack the time and manpower to ensure the legitimacy of species transport documents).

115. See Walker, *supra* note 104, at A18 (Walker asserts that organized criminals fall into three groups. First there are local farmers who sell animals to make ends meet. Second there are the "violent mafia-like families who buy from impoverished peasants. The most threatening traffickers are drug cartels that use animals to smuggle cocaine through Mexico into the United States.").

## 2. Extinction of Endangered Species Caused by Organized Crime

Organized crime significantly contributes to the extinction of endangered species worldwide.<sup>116</sup> The reason for this is that organized crime under CITES entails few risks and high profit.<sup>117</sup> Even more compelling than the lucrative profits generated by endangered species crime is the relationship between endangered species and drugs.<sup>118</sup> Many organized crime rings that trade in wildlife also trade in drugs and weapons.<sup>119</sup> They use the same methods of transport and the same trafficking routes to conduct both illegal businesses.<sup>120</sup> Endangered species are also used within drug rings to smuggle drugs.<sup>121</sup> For example, boa constrictors and alligators are used to smuggle drugs from Mexico into the United States because of their large stomach cavities.<sup>122</sup> In fact, more than one-third of all cocaine seized in the United States was found in shipments of animals.<sup>123</sup> It is not only profitable for drug traffickers to use the same channels of distribution for drugs and endangered species, but the subterfuge of animals to transport drugs may reduce the risk of getting caught for drug smuggling.<sup>124</sup>

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116. See *id.* at A1.

117. See *supra* note 104 and accompanying text.

118. See Walker, *supra* note 104, at A18 (describing the drug cartels use of animals to smuggle drugs).

119. See Shaw, *supra* note 26, at 295 (suggesting that many organized crime rings that deal in one trade are involved in all of them).

120. See *id.* at 296-297.

121. See Walker, *supra* note 104, at A18.

122. See *id.*

123. See *id.*

124. See Anderson, *supra* note 28, at 33 (suggesting that the lack of wildlife inspectors in the United States has caused drug smugglers to increasingly use endangered species to conceal their drug cargo).

### 3. Endangerment of Species Caused by Animal Advocates

Illegal trade of endangered species may even be committed by animal advocates. For example, in *United States v. Silva*,<sup>125</sup> the defendant was a recognized advocate for the protection of endangered parrots.<sup>126</sup> Nonetheless, the defendant admitted that he combined shipments of illegal birds with shipments of legal birds.<sup>127</sup> This case was part of an investigation that resulted in over thirty arrests and convictions.<sup>128</sup> The smuggling conspiracy, which took place from 1986 to 1991, yielded over \$1 million in illegal trade of endangered species.<sup>129</sup>

The illegal trafficking of endangered species has many causes. The problem is finding a solution that addresses the various causes. Although CITES attempts to provide a solution, whether CITES effectively achieves this is doubtful: "compliance with the treaty remains problematic and various states have achieved divergent levels of success in implementing the treaty."<sup>130</sup>

#### B. Failure of CITES to Produce Consistent National Policy

The solution to a problem may often create even more problems. The inconsistent application of CITES by

125. 122 F.3d 412 (7th Cir. 1997).

126. See Tom Kenworthy, *Parrot Expert Pleads Guilty to Illegal Trafficking After 6-Year Probe*, THE WASH. POST, Feb. 2, 1996, at A03.

127. 122 F.3d at 413.

128. See Kenworthy, *supra* note 126, at A03. The United States Fish and Wildlife Service conducted the six-year undercover investigation called "Operation Renegade."

129. See *id.* See also *United States v. Silva*, 122 F.3d at 414. The defendant was indicted for conspiring to import, endangered birds and wildlife worth \$1.3 million into the United States. See *id.*

130. Vulpio, *supra* note 53, at 469.

member countries exemplifies what happens when the solution becomes the problem.<sup>131</sup>

### 1. The United States' Endangered Species Policy

The evolution of endangered species protection in the United States provides a good basis upon which to evaluate the effectiveness of CITES. The first statute protecting wildlife in the United States, the Lacey Act, was enacted in 1900.<sup>132</sup> Originally, the legislation was drafted primarily to protect birds and regulate the international trade of birds.<sup>133</sup> The Lacey Act was amended in 1981 to prohibit trafficking in endangered wildlife in violation of any law, treaty or regulation of the United States.<sup>134</sup> The Lacey Act helps control illegal trade of endangered species by imposing monetary and penal sanctions on violators.<sup>135</sup>

The ESA was enacted in 1973 to enforce the various international endangered species agreements to which the United States is a party.<sup>136</sup> The purpose of the ESA

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131. See discussion *infra* Part II.B.

132. See Lacey Act Amendments of 1981, Pub. L. No. 97-79, 95 Stat. 1073, (codified as amended at 16 U.S.C. §§ 3371-3378 (1994)).

133. See Anderson, *supra* note 28, at 36 (discussing the history and development of The Lacey Act).

134. See 16 U.S.C. § 3372(a)(1). The Lacey Act protects against import, export, transportation, sale, receipt, acquisition, or purchase of fish, wildlife, or plants that are taken, possessed, transported or sold in violation of any law, treaty or regulation of the United States. See *id.*

135. See 16 U.S.C. § 3373. The statute provides for civil fines up to \$10,000 for any person who commits a violation and for criminal penalties, which include a 5-year maximum sentence and \$20,000 maximum fines for each violation. See *id.*

136. See 16 U.S.C. § 1531(a)(4). The international treaties include: Migratory Bird Treaties with Canada and Mexico; the Migratory and Endangered Bird Treaty with Japan; the Convention on Nature Protection and Wildlife Preserva-

is to conserve endangered species.<sup>137</sup> The ESA prohibits importing, exporting, taking, or trading endangered species.<sup>138</sup> The term "taking" means to "harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect."<sup>139</sup> Species become protected under the ESA when either the Secretary of the Interior or the Secretary of Commerce of the United States determines that a particular species is in danger of extinction.<sup>140</sup> The ESA, like the Lacey Act, also provides for monetary and penal sanctions to be imposed on violators.<sup>141</sup> Violators may be prosecuted under both the Lacey Act and the ESA. For example, in *United States v. Bernal*,<sup>142</sup> the defendant was convicted of attempting to export endangered species from the United States under both statutes.<sup>143</sup> Where CITES fails to provide monetary sanctions, the United States succeeds, at least theoretically.

The ESA provides for sanctions action against violators in order to achieve its purpose.<sup>144</sup> Congress has recognized that the need to protect endangered species is based on the "aesthetic, ecological, educational, historical, recreational and scientific value" of various species to the United States.<sup>145</sup> However, while Congress

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tion in the Western Hemisphere; the International Convention for the Northwest Atlantic Fisheries; the International Convention for the High Seas Fisheries of the North Pacific Ocean and CITES. *Id.*

137. See 16 U.S.C. § 1531(b).

138. See 16 U.S.C. § 1538(a).

139. 16 U.S.C. § 1532(19).

140. See 16 U.S.C. § 1533(a).

141. See 16 U.S.C. § 1540. The statute provides for civil fines, which range from a minimum of \$500 to a maximum of \$25,000 for each violation and for criminal penalties which include a one year maximum sentence and \$50,000 maximum fines for each offense. See *id.*

142. 90 F.3d 465 (11th Cir. 1996).

143. 90 F.3d at 465.

144. See 16 U.S.C. § 1540(a), (b).

145. See 16 U.S.C. § 1531.

has a commitment to protect endangered species, it needs to increase its financial commitment.<sup>146</sup>

Enforcement of the ESA and the Lacey Act is very difficult due to a lack of resources. For example, in 1995, there were only seventy-four federal wildlife inspectors for over three hundred ports of entry into the United States,<sup>147</sup> making it virtually impossible for law enforcement officials to oversee every entryway. It is therefore inevitable that thousands of illegally traded species are entering the United States each year.<sup>148</sup>

The ESA may also be difficult to enforce because endangered species may be difficult to identify.<sup>149</sup> For example, in *United States v. One Handbag of Crocodilius Species*,<sup>150</sup> identification difficulty associated with crocodile hides interfered with enforcement of the ESA.<sup>151</sup> Similarly, in *United States v. 3210 Crusted Sides of Caiman Crocodilius Yacare*,<sup>152</sup> the government had to first identify the correct crocodile species before it could demonstrate probable cause for a forfeiture action.<sup>153</sup> In

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146. See, e.g., United States Fish and Wildlife Service ("USFWS") News Release Feb. 7, 2000 (visited March 29, 2000) <<http://news.fws.gov/newsreleases/Display.cfm?ID=209>>. In his FY 2001 budget, President Clinton proposed a \$13 million increase to the law enforcement program of the United States Fish and Wildlife Service to combat the challenges facing endangered species recognizing the need to increase the United State commitment. See *id.*

147. See Anderson, *supra* note 28, at 33.

148. See *id.* (claiming that only 23% of 77,000 animals brought into the United States are inspected).

149. See, e.g., Michael J. Goodman, *It's a Jungle Out There*, L.A. TIMES MAGAZINE, Oct. 15, 1995, at 15 (reporting an illegal importer's statement that United States wildlife inspectors "wouldn't know an endangered arawana or arapaima (a protected South American fish) if it bit them in the nose").

150. 856 F. Supp. 128 (E.D.N.Y. 1995).

151. 856 F. Supp. at 129.

152. 636 F. Supp. at 1281.

153. 636 F. Supp. at 1283.

order to prevent endangered species trafficking, the United States should devote more resources to hire and train more inspectors.<sup>154</sup>

An example of an effective allocation of resources is found at the United States Fish and Wildlife Service. In 1989, the USFWS opened the first and only wildlife forensics lab.<sup>155</sup> The lab analyzes an endangered species crime scene and makes the "crucial link between victim, criminal and crime scene."<sup>156</sup> The lab has become a useful tool to combat wildlife crime.<sup>157</sup>

Ironically, in spite of the United States' extensive regulations to prohibit endangered species trafficking, the United States leads the world in importation of illegal wildlife and wildlife parts.<sup>158</sup> The failure to commit sufficient resources to properly police endangered species traffickers could only increase the problem. Unfortunately, even though the United States has stringent laws against endangered species trafficking, it may not be enough to preserve endangered species. For CITES to be effective, the United States as well as other member countries, have to measure up to the goal of CITES.

## 2. Japan's Endangered Species Policy

In 1980, Japan became a member of CITES.<sup>159</sup> When Japan joined CITES, it made reservations for 13 species protected under the treaty.<sup>160</sup> When a country takes a

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154. See *supra* note 147 and accompanying text.

155. See Kathleen F. Doyle, *Dead Reckoning: Wildlife Super Sleuths Use Sophisticated Forensics to Track Poachers*, E MAGAZINE, Apr. 1, 1995, at 20.

156. *Id.* (comparing the analysis to that in a police crime lab).

157. See *id.*

158. See Shaw, *supra* note 26, at 284.

159. See *infra* Appendix B.

160. See Brad L. Bacon, *Enforcement Mechanisms in International Wildlife Agreements and the United States: Wading Through the Murk*, 12 GEO. INT'L ENVTL. L. REV. 331, 336

reservation on a particular species, it can then trade with both non-CITES countries and CITES members who have taken the same reservation.<sup>161</sup> The result is that in Japan, the trade of several endangered species is legal and is not prevented by CITES.<sup>162</sup>

Trade of quasi-endangered species in Japan is made worse because of Japan's failure to take any affirmative action against endangered species trade.<sup>163</sup> Moreover, Japan is the world's biggest purchaser of rare animals.<sup>164</sup> In fact, a recent study by Trade Records Analysis of Flora and Fauna in Commerce ("TRAFFIC")<sup>165</sup> revealed that products containing tiger parts, illegally traded under CITES, are traded freely throughout Japan.<sup>166</sup> Japan claims that tiger parts are used for medicinal purposes.<sup>167</sup> This practice evolved from traditional Chinese medicine.<sup>168</sup> In fact, traditional Chinese medicine has influenced medicine throughout Asia.<sup>169</sup>

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(1999) (stating that Japanese traders continue to trade in their reserved species, even though some of them are under serious threat of extinction).

161. Padgett, *supra* note 98, at 535.

162. See CITES, *supra* note 1 at art. XXIII(3). Until Japan withdraws its reservations, Japan's trade of several endangered species is not prevented by CITES. See *id.*

163. See David E. Dreifke, *The Foreign Commerce Clause and the Market Participation Exemption*, 25 VAND. J. TRANSNAT'L L. 257, 261-262 (alleging Japan has not only resisted international efforts against endangered species trade, but refused to adopt internal legislation until 1987).

164. See Sally Fisher, *Orangutans, Lizards Rife in Smuggled Pet Market*, S. CHINA MORNING POST, Aug. 5, 1999, at 10.

165. TRAFFIC is a worldwide organization protecting wildlife trade. See discussion *infra* at Part II.B.6.

166. See *Tiger Products sold widely in Japanese Cities*, JAPAN WKLY. MONITOR, Feb. 22, 1999, available in 1999 WL 8896876.

167. See *id.*

168. See Cheung, *supra* note 19, at 136.

169. See *id.* at 131.

### 3. China's Endangered Species Policy

China has been a member of CITES since 1981.<sup>170</sup> Traditional Chinese medicine, which has been practiced for over 5000 years, continues to threaten endangered species.<sup>171</sup> Although China's traditions may hinder the country's adherence to CITES, China has taken measures to substitute certain animal products in their medicines.<sup>172</sup> For example, the Chinese have removed tiger bone from most medicines and have implemented trade bans on tiger-based medicines.<sup>173</sup> Perhaps China will be more inclined to comply with CITES if financial incentives could outweigh tradition.<sup>174</sup>

### 4. Africa's Endangered Species Policy

The African national governments are taking steps to prevent the poaching and illegal trade of endangered species.<sup>175</sup> In 1994, six African countries created a task force to combat illegal trade of endangered species.<sup>176</sup> The task force was developed as a joint effort among African nations to combat endangered species crimes and improve the application of CITES across the African nations.<sup>177</sup> These nations understand the importance of international cooperation in order to advance protection of endangered species.

170. See *infra* Appendix B.

171. See *TRAFFIC Factfile: Substitutes for Endangered and Threatened Species in Traditional Medicines*, (visited April 15, 2000) <[http://www.traffic.org/factfile/factfile\\_substitutes.html](http://www.traffic.org/factfile/factfile_substitutes.html)>.

172. See *id.*

173. See *id.*

174. See, e.g., Vulpio, *supra* note 53, at 472.

175. See *Task Force to Fight Wildlife Crime in Africa*, PANAFRICAN NEWS AGENCY, March 17, 1999, available in 1999 WL 7785333.

176. See *id.* The six countries are Congo, Kenya, Lesotho, Tanzania, Uganda and Zambia. See *id.*

177. See *id.*

Many endangered species live in Africa,<sup>178</sup> so it is important for African nations to join forces to combat endangered species crime. Unfortunately, the African countries do not have the financial resources to prevent crimes.<sup>179</sup> Smaller African countries must rely on funding from larger, more industrialized nations to help them combat poaching in the country.<sup>180</sup>

##### 5. European Union Endangered Species Policy

The European Union ("EU") has been accused of being one of the largest importers of illegal wildlife.<sup>181</sup> In 1997, the EU enacted internal legislation to regulate EU countries to combat endangered species trade.<sup>182</sup> The EU regulations explicitly enforce CITES,<sup>183</sup> and in fact may protect some species at an even higher level than CITES.<sup>184</sup> In an effort to diminish illegal endangered species trade, the EU requested that "every Party to [CITES] increase penalties [for endangered species

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178. See, e.g., Lavy, *supra* note 51, at 444.

179. See Philip Weinberg, *International Protection of Endangered Species: The Steps That Should Be Taken*, 3 *TOURO J. TRANSNAT'L L.* 89, 98 (1992). It will cost a country like Kenya one hundred million dollars a year to have the funds necessary to prevent endangered species crimes. See *id.*

180. See *id.* at 98.

181. See *Fauna and Flora: EU, the Leading Importer in Endangered Species?*, *EUR. ENV'T*, Jan. 2, 1995, available in 1995 WL 8355401.

182. See EC Reg. No. 338/97 and No. 939/37, *supra* note 9. The two regulations comprise this agreement. EC No. 338/97 regulates the protection and trade of endangered species and EC No. 939/37 details the implementation of the first regulation.

183. See EC Reg. No. 338/97 and No. 939/37, *supra* note 9, at preamble.

184. See generally *UN: Commission on sustainable development continues high-level segment, with debate focused on oceans*, *supra* note 91.

crime] so they are commensurate with the potential profits of illegal activities and act as a deterrent.”<sup>185</sup>

## 6. Organizational Efforts

The World Wildlife Fund (“WWF”) is the largest independent organization created to protect wildlife from exploitation.<sup>186</sup> The organization has five million supporters and a global network of offices in over fifty countries.<sup>187</sup> In the 1970’s, the WWF became involved in preventing the extinction of endangered species.<sup>188</sup> In 1976, the WWF joined forces with The World Conservation Union (“IUCN”) to create TRAFFIC.<sup>189</sup> TRAFFIC was established to monitor and help prevent the illegal trade of endangered species.<sup>190</sup> TRAFFIC analyzes trade statistics and develops recommendations for the conservation of endangered species.<sup>191</sup> The organization works closely with CITES to control endangered species crimes and assist

185. Resolution on the Convention on International Trade in Endangered Species (CITES), 1997 OJ C 200, June 12, 1997.

186. See World Wildlife Fund, *Who is WWF?* (visited April 15, 2000) <[http://www.panda.org/index\\_whois.cfm](http://www.panda.org/index_whois.cfm)>. The organization has local offices in 96 countries and works with national law enforcement to prevent the illegal international trade of wildlife. See *id.*

187. See *id.*

188. See *A History of WWF, The Seventies*, (visited April 18, 2000) <[http://www.panda.org/wwf/history\\_70s.htm](http://www.panda.org/wwf/history_70s.htm)> (recalling that in 1973 the WWF helped the Indian government launch Project Tiger to help save severely endangered tigers).

189. See TRAFFIC, (visited April 1, 2000) <[http://www.panda.org/resources/factsheets/species/fct\\_traffic.htm](http://www.panda.org/resources/factsheets/species/fct_traffic.htm)>.

190. See *id.* Funded in large part by the WWF, TRAFFIC has staff in 17 offices on five continents worldwide to monitor the trade of endangered species and report on the worldwide trade in wild plants and animals. See *id.*

191. See *id.*

in the investigations of such crimes.<sup>192</sup> However, while identifying the problem is the first step, it is not the solution. CITES needs to be consistently applied and universally adopted.

### III. RECOMMENDATIONS TO STOP ENDANGERED SPECIES CRIME

On its face, the concept of an international treaty to protect endangered species such as CITES is promising. Unfortunately, CITES is largely ineffective in preventing the extinction of endangered species.<sup>193</sup> What is needed are stronger penalties for the crime of endangered species trafficking,<sup>194</sup> consistent legislation among member countries,<sup>195</sup> and more funding for law enforcement in countries with endangered species legislation.<sup>196</sup>

#### A. *Recommendation for More Effective and Stronger Penalties and Sanctions*

The best course of action to prohibit endangered species trafficking is to heighten the monetary and penal sanctions against traffickers to a level so great that they cannot afford to be in business.<sup>197</sup> By increasing sanctions on a par with those imposed in the drug trade,<sup>198</sup>

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192. *See id.*

193. *See discussion supra* Part II.B.

194. *See discussion infra* Part III.A.

195. *See discussion infra* Part III.B.

196. *See discussion infra* Part III.C.

197. *See generally, Vulpio, supra* note 53, at 472 (asserting that endangered species trafficking will continue as long as it is lucrative).

198. *See Shaw, supra* note 26, at 297-300 (suggesting that the Racketeer Influenced and Corrupt Organizations Act (RICO), which applies to drug-related activities, be amended to include illegal endangered species crime).

potential traffickers should be sufficiently deterred.<sup>199</sup> Every country must enact and enforce stricter regulations that include both monetary and penal sanctions.<sup>200</sup>

Advocates of CITES reform suggest that the treaty itself should provide for monetary sanctions against illegal traders.<sup>201</sup> Monetary sanctions may or may not deter individuals from engaging in endangered species trafficking. Based on the high profitability of endangered species trafficking,<sup>202</sup> it is unlikely that monetary sanctions will deter most traffickers.<sup>203</sup>

Some advocates of CITES reform recommend that arrests should be made in conjunction with monetary penalties.<sup>204</sup> Under this approach, violators of CITES would be guilty of crimes and face monetary and penal sanctions. However, this approach could be difficult to accomplish for several reasons. First, while trafficking of endangered species is considered by CITES to be "illegal," if countries do not have internal regulations making it a crime it cannot be enforced.<sup>205</sup> It is impossi-

199. See *id.* at 302 (arguing that legislation in the United States, such as RICO, would provide an "effective deterrent to the international trade of endangered species").

200. See Lavy, *supra* note 51, at 446 (suggesting that members of CITES should amend the treaty to provide substantial penalties and to set up an effective enforcement mechanism).

201. See, e.g., *id.* at 450 (claiming that lack of a treaty sanction undercuts the deterrent effect of CITES).

202. See Cheung, *supra* note 19, at 148.

203. See Gary D. Meyers & Kyla Seligsohn Bennett, *Answering the "Call of the Wild": An Examination of U.S. Participation in International Wildlife Law*, 7 PACE ENVTL. L. REV. 75, 105 (1989) (stating that international wildlife trade can be so lucrative that traffickers may always be willing to take significant risks).

204. See *id.* (arguing that mandatory jail terms in conjunction with an increase in fines would deter prospective violators from entering the illegal wildlife trade).

205. See generally, Brad L. Bacon, *Enforcement Mechanisms in International Wildlife Agreements and the United*

ble to internationally eliminate the "crime" of endangered species trading unless all nations have agreed that it is a crime and should be outlawed. For example, in 1989, CITES implemented a worldwide ban on the trade of ivory to reduce the threat of extinction of elephants.<sup>206</sup> Although the worldwide ban on elephant products was implemented ten years ago, the threat of illegal ivory trade still exists.<sup>207</sup> Since the ban was never made a criminal violation, it was not strictly enforced.<sup>208</sup>

CITES regulates trade of endangered species and requires that captured endangered species be transported back to their country of origin.<sup>209</sup> However, the treaty does not provide for punishment of the traders, nor does it require parties to CITES create their own national sanctions.<sup>210</sup> Furthermore, CITES requires member countries to record incidents of trade of listed animals across their borders.<sup>211</sup> This alerts member nations of potential illegal activity.<sup>212</sup> It is not surprising that the

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*States: Wading Through the Murk*, 12 GEO. INT'L ENVTL. L. REV. 331, 335 (1999) (stating that a member country is generally not bound to the terms of an international agreement if that country's legislation has failed to ratify or adopt the treaty).

206. See *Elephants and Ivory*, *supra* note 97, at A18 (suggesting that a ban on the trade of ivory would lessen the market for ivory).

207. See Dansky, *supra* note 101, at 974 (asserting that conservationist groups claim that the limited removal of the ivory trade ban has already led to increased poaching).

208. See *id.*

209. See CITES, *supra* note 1, at art. VIII(4). A confiscated living specimen shall be entrusted to the management authority of the country of confiscation who will return the species to its country of origin. See *id.*

210. See *id.* at art. VIII(1).

211. See CITES, *supra* note 1, at art. VIII(6).

212. See, e.g., Heppes and McFadden, *supra* note 11, at 233-234 (suggesting that France's inadequate reporting, for example, has thwarted efforts to verify the legality of crocodile trade).

reports have been shown not to be in compliance with CITES.<sup>213</sup> If the reports are misleading, the punishment will not be appropriate.

For CITES to be effective, the punishment must fit the crime. Endangered species traffickers should be penalized like drug traffickers.<sup>214</sup> These criminals should be sent to jail and should be substantially fined.<sup>215</sup> The fines must be substantial enough to outweigh any financial gain. The sanctions must be severe enough so they provide permanent deterrence.

### B. *Recommendation for Consistent National Legislation*

Under CITES, endangered species trafficking is not a crime.<sup>216</sup> Instead, CITES merely recommends that member countries create legislation to determine what is a crime and what the appropriate punishment should be.<sup>217</sup> As a result, the legislation among the various member countries is widely divergent.<sup>218</sup> Illegal trade of wildlife is an international crime, since extinction is a worldwide problem.<sup>219</sup> In order to globally combat crime, all countries must cooperate. If the national legislation among countries was consistent, endangered species traffickers would all be on notice of the severity of the penalties associated with trading endangered species anywhere in the world. If all CITES member countries

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213. See *id.* at 233 (stating that national compliance of the record keeping provisions of CITES continues to be inadequate).

214. See *supra* note 198 and accompanying text.

215. See Walker, *supra* note 104, at A18.

216. See Lavy, *supra* note 51, at 448 (stating that CITES was not created to criminalize international trade of endangered species protected by the treaty).

217. See *id.*

218. See, e.g., *supra* note 88 and accompanying text.

219. See Shaw, *supra* note 26, at 284 (describing that the problem of illegal wildlife crime is reaching crisis proportions internationally).

had the same sanctions and proper enforcement, endangered species crime would likely decrease.

CITES should provide an international standard for providing sanctions against this illegal endangered species trade.<sup>220</sup> CITES should mandate that endangered species trafficking is a crime and then set international guidelines for sanctions. Countries which ratify the treaty should be required to include CITES sanctions in their national legislation so that all of the members of the treaty have the same concept of endangered species crime and the same available punishments to impose against each and every criminal.

The most significant flaw with the argument for consistent adherence to an international standard is that the various factors that affect why different countries commit endangered species crimes belie uniformity.<sup>221</sup> Another problem with requiring consistent legislation is that it forces countries either to monitor one another or to have an international monitor.<sup>222</sup> Not only would mutual cooperation be unenforceable, but the cost involved in international monitoring and compliance may be prohibitive.

### C. Recommendation for Worldwide Funding

The greatest difficulty in enforcing CITES worldwide is a lack of national and international financial resources, which may prevent each country from pursuing ade-

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220. See Meyers & Seligsohn Bennett, *supra* note 203, at 105 (suggesting that if CITES' purpose is to reduce the threat of endangered species extinction, strong sanctions must be provided to halt their illegal trade).

221. See discussion *supra* Part I.A.

222. See Bacon, *supra* note 160, at 344 (suggesting that since CITES provides no guidance as to the level of punishment member countries should impose on illegal traders, "a penalty imposed by one country may be considered a slap on the wrist by another").

quate criminal investigations.<sup>223</sup> The result is that illegal trade in endangered species occurs without fear of ever being caught. Countries that do not invest enough resources to protect every port of entry, in effect, aid and abet the import of endangered species.<sup>224</sup> If the risk is low, the crime rate will be high.<sup>225</sup> Therefore, increased funding is necessary to hire and train more law enforcement individuals worldwide.

The fines paid for endangered species trafficking crimes should be put into a fund that can be used for law enforcement worldwide.<sup>226</sup> The fund could help smaller nations, like those in Africa,<sup>227</sup> which have difficulty meeting the high cost of protecting the many endangered species.

#### CONCLUSION

The goal of CITES is to prevent the extinction of endangered species.<sup>228</sup> The world must recognize that endangered species trafficking is a crime against humanity. Endangered species trafficking must be identified

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223. See Cheung, *supra* note 19, at 129-130 (stating that in Asia, lack of funding is a contributor to the inadequate implementation of national legislation to enforce CITES).

224. See, e.g., Goodman, *supra* note 149, at 15 (claiming that in the Los Angeles area, there are 130 USDA inspectors covering all air and sea ports, and they are able to inspect two percent of all shipments).

225. See discussion *supra* Part II.A.1. (describing, for example, that in Mexico minimal punishment is not a deterrence to animal smuggling).

226. See discussion *supra* Part II.A. (describing the many crimes occur due to lack of funding for enforcement, especially in developing countries). The use of fines for enforcement funding may increase the quality and quantity of enforcement personnel worldwide.

227. See discussion *supra* Part II.A.1.

228. See CITES, *supra* note 1, at preamble.

as an international crime deserving a global solution. When endangered species trafficking is labeled a crime, the next step is to adequately punish the criminals. Tougher sanctions and consistent enforcement should be imposed by every CITES country. There must be a joint international effort in order to end the illegal trade of endangered species. Endangered species trafficking is the third largest illegal trade in the world.<sup>229</sup> Humans have significantly contributed to the extinction of endangered species.<sup>230</sup> Therefore, since humans have caused the endangerment of species, humans must now protect them.

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229. See discussion *supra* Part I.A.

230. See discussion *supra* Part I.A.

APPENDIX A: SUMMARY OF SPECIES LISTED IN CITES<sup>231</sup>

SPECIES	COMMON NAME	CITES APPENDIX
Acinonyx Jubatus	Hunting Leopard or Cheetah	Appendix I
Leopardus Pardalis	Ocelot	Appendix I
Panthera Onca	Jaguar	Appendix I
Panthera Pardus	Leopard	Appendix I
Panthera Tigres	Tiger	Appendix I
Gorilla Gorilla	Gorilla	Appendix I
Ailuropoda Melanoleuca	Giant Panda	Appendix I
Balaenoptera Musculus	Blue Whale	Appendix I
Megaptera Novaeangliae	Humpback Whale	Appendix I
Elephas Maximus	Asian or Indian Elephant	Appendix I
Loxodonta Africana	African Elephant	Appendix I
Diceros Bicornis	Black Rhinoceros	Appendix I

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231. See CITES Fauna Species List, (visited April 28, 2000) <<http://www.wcmc.org.uk/CITES/eng/index.shtml>>. The species listed in this appendix are a representative sample of some of the more common species. Appendix II to CITES includes 28,993 species and Appendix I includes 821 species. *Id.*

Lynx Canadensis	Canadian or American Lynx	Appendix II
Lynx Rufus	Bobcat	Appendix II
Panthera Leo	Lion	Appendix II
Prionailurus Bengalensis	Leopard Cat	Appendix II
Ursus Maritimus	Polar Bear	Appendix II
Dendrobates or Epipedobates Tricolor	Phantasmal Poison Frog	Appendix II
Boa Constrictor	Boa Constrictor	Appendix II

APPENDIX B: CURRENT MEMBERS OF CITES:<sup>232</sup>

Country	Date of Entry into Force (DD/MM/YY)
1. United States	01/07/75
2. Nigeria	01/07/75
3. Switzerland	01/07/75
4. Tunisia	01/07/75
5. Sweden	01/07/75
6. Cyprus	01/07/75
7. Ecuador	01/07/75
8. Chile	01/07/75
9. Uruguay	01/07/75
10. Canada	09/07/75
11. Mauritius	27/07/75
12. Nepal	16/09/75
13. Peru	25/09/75
14. Costa Rica	28/09/75
15. South Africa	13/10/75
16. Brazil	04/11/75
17. Madagascar	18/11/75
18. Niger	07/12/75
19. Morocco	14/01/76
20. Ghana	12/02/76
21. Papua New Guinea	11/03/76
22. Germany	20/06/76
23. Pakistan	19/07/76
24. Finland	08/08/76
25. India	18/10/76
26. Democratic Republic of the CongoCD	18/10/76
27. Norway	25/10/76
28. Australia	27/10/76
29. United Kingdom	31/10/76
30. Iran	01/11/76

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232. See CITES List of Parties, (visited April 28, 2000) <<http://www.wcmc.org.uk/CITES/eng/index.shtml>>.

31. Paraguay	13/02/77
32. Seychelles	09/05/77
33. Guyana	25/08/77
34. Denmark	24/10/77
35. Senegal	03/11/77
36. Nicaragua	04/11/77
37. Gambia	24/11/77
38. Malaysia	18/01/78
39. Venezuela	22/01/78
40. Botswana	12/02/78
41. Egypt	04/04/78
42. Monaco	18/07/78
43. France	09/08/78
44. Panama	15/11/78
45. Togo	21/01/79
46. Kenya	13/03/79
47. Jordan	14/03/79
48. Indonesia	28/03/79
49. Sri Lanka	02/08/79
50. Bahamas	18/09/79
51. Bolivia	04/10/79
52. Italy	31/12/79
53. Guatemala	05/02/80
54. United Republic of Tanzania	27/02/80
55. Liechtenstein	28/02/80
56. Israel	17/03/80
57. Japan	04/11/80
58. Central African Republic	25/11/80
59. Rwanda	18/01/81
60. Suriname	15/02/81
61. Zambia	22/02/81
62. Portugal	11/03/81
63. China	08/04/81
64. Argentina	08/04/81
65. Liberia	09/06/81
66. Mozambique	23/06/81

67. Zimbabwe	17/08/81
68. Cameroon	03/09/81
69. Belize	21/09/81
70. Philippines	16/11/81
71. Colombia	29/11/81
72. Guinea	20/12/81
73. Bangladesh	18/02/82
74. Austria	27/04/82
75. Malawi	06/05/82
76. Sudan	24/01/83
77. Saint Lucia	15/03/83
78. Thailand	21/04/83
79. Congo	01/05/83
80. Belgium	01/01/84
81. Algeria	21/02/84
82. Luxembourg	12/03/84
83. Trinidad and Tobago	18/04/84
84. Benin	28/05/84
85. Netherlands	18/07/84
86. Honduras	13/06/85
87. Hungary	27/08/85
88. Afghanistan	28/01/86
89. Somalia	02/03/86
90. Spain	28/08/86
91. Singapore	28/02/87
92. Dominican Republic	17/03/87
93. El Salvador	29/07/87
94. Burundi	06/11/88
95. Saint Vincent and the Grenadines	VC 28/02/89
96. Chad	03/05/89
97. Gabon	14/05/89
98. Ethiopia	04/07/89
99. Malta	16/07/89
100. New Zealand	08/08/89
101. Vanuatu	15/10/89
102. Burkina Faso	11/01/90
103. Poland	12/03/90

104.	United Arab Emirates	09/05/90
105.	Cuba	19/07/90
106.	Brunei Darussalam	02/08/90
107.	Guinea-Bissau	14/08/90
108.	Namibia	18/03/91
109.	Bulgaria	16/04/91
110.	Mexico	30/09/91
111.	Uganda	16/10/91
112.	Russian Federation	01/01/92
113.	Djibouti	07/05/92
114.	Equatorial Guinea	08/06/92
115.	Estonia	20/10/92
116.	Slovakia	01/01/93
117.	Czech Republic	01/01/93
118.	Greece	06/01/93
119.	Barbados	09/03/93
120.	Republic of Korea	07/10/93
121.	Vietnam	20/04/94
122.	Saint Kitts and Nevis	15/05/94
123.	Mali	16/10/94
124.	Romania	16/11/94
125.	Eritrea	22/01/95
126.	Sierra Leone	26/01/95
127.	Côte d'Ivoire	19/02/95
128.	Comoros	21/02/95
129.	Dominica	02/11/95
130.	Belarus	08/11/95
131.	Mongolia	04/04/96
132.	Saudi Arabia	10/06/96
133.	Georgia	12/12/96
134.	Turkey	22/12/96
135.	Latvia	12/05/97
136.	Swaziland	27/05/97
137.	Jamaica	22/07/97

138. Yemen	03/08/97
139. Myanmar	11/09/97
140. Cambodia	02/10/97
141. Antigua and Barbuda	06/10/97
142. Uzbekistan	08/10/97
143. Fiji	29/12/97
144. Mauritania	11/06/98
145. Azerbaijan	21/02/99
146. Grenada	28/11/99
147. Ukraine	29/03/00
148. Iceland	02/04/00
149. Kazakhstan	19/04/00
150. Slovenia	23/04/00
151. Croatia	12/06/00